

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MARGARET DARR,

Plaintiff,

v.

Case No.: 1:18-cv-00672

NEW MEXICO DEPARTMENT
OF GAME AND FISH,

Defendant.

NOTICE OF REMOVAL

COMES NOW Defendant New Mexico Department of Game and Fish (“Defendant”), and pursuant to 28 U.S.C. § 1446(a), gives Notice of Removal to this Court of the above-captioned action pending in the First Judicial District for the State of New Mexico, Santa Fe County as Cause No. D-101-CV-2018-01708. In support thereof, Defendant states as follows:

1. This action was commenced by the filing of Plaintiff’s Complaint for Violations of the New Mexico Human Rights Act for Disability Discrimination and Retaliation, Retaliation for Violations of the Fair Pay for Women Act, Whistleblower Protection Act and Fraud Against Taxpayer Act on June 8, 2018. Defendant was served with Plaintiff’s Complaint on June 15, 2018.

2. In paragraphs 51, 52, 57, 67, 70, 71, 75, 76, 90, 97, 123, 124 and 125 of the Complaint, the Plaintiff specifically refers to the Family Medical Leave Act or Plaintiff’s authorized Family Medical Leave. The allegations of these paragraphs imply, and some outright contend, that DGF violated the Plaintiff’s FMLA rights either by retaliating against her for invoking them or through interference with her exercise of those rights. Either

way, they involve interpretation and application of a federal statute, the Family Medical Leave Act.

3. In paragraphs 70 and 71, Plaintiff alleges that:

70. On October 31, 2017, Mr. Cline continued his retaliation by chastising Ms. Darr over a missed deadline that occurred while Ms. Darr was on Family Medical Leave. In violation of law, Mr. Cline instructed Ms. Darr that she could not miss another deadline without prior notice, knowing full well that prior notice was impossible when Ms. Darr had to use intermittent/emergency Family Medical Leave for depression and anxiety flare ups. The missed deadline was of no consequence to any grant requirement or legal obligation.”

71. On November 6, 2017, Ms. Darr again filed a grievance about her interim evaluation being retaliatory for her protected activity and exercising her rights under Family Medical Leave and disability laws after Ms. Ruiz rejected her prior grievance. Performance issues were raised regarding the period while Ms. Darr was on Family Medical Leave.

The allegations contained in these paragraphs establish that the trier of fact will have to determine whether Defendant DGF interfered with Plaintiff's Family Medical Leave by criticizing Ms. Darr for missing a deadline and by writing her interim evaluation, for which she filed a FMLA-based grievance. These allegations raise a question of interpretation and application of the Family Medical Leave Act, a federal statute.

4. In paragraph 97 of the Complaint, Plaintiff alleges that “[She]...continued to engage in protected activity when she identified her temporary disability, requested Family and Medical leave and an accommodation.” Again, these allegations imply that Defendant interfered with Plaintiff's FMLA rights.

5. In paragraph 125, Plaintiff alleges that “The NMDGF did not act on its perception related to Ms. Darr's need for accommodation when it approved the Family Medical Leave application.” Once more, the Plaintiff invites the Court to infer that the Defendant violated Plaintiff's Family Medical Leave rights.

6. The remaining process, pleadings and orders served upon the Defendant in this matter are attached hereto as **Exhibit A** and consist of:

- a. Plaintiff's Complaint for Violations of the New Mexico Human Rights Act for Disability Discrimination and Retaliation, Retaliation for Violations of the Fair Pay for Women Act, Whistleblower Protection Act and Fraud Against Taxpayer Act filed on June 8, 2018.
- b. Summons Issued to Attorney General, filed on June 13, 2018.
- c. Summons Issued to New Mexico Department of Game and Fish, filed on June 13, 2018.
- d. Six Person Jury Demand, filed on June 13, 2018.
- e. Summons Return for Alexa Sandoval NM Department of Game and Fish, filed on June 19, 2018.
- f. Summons Return for NM Attorney General, filed on June 19, 2018.

7. In Plaintiff's Complaint for Violations of the New Mexico Human Rights Act for Disability Discrimination and Retaliation, Retaliation for Violations of the Fair Pay for Women Act, Whistleblower Protection Act and Fraud Against Taxpayer Act on June 8, 2018, Plaintiff alleges that she was the victim of unlawful retaliation for having taken Family Medical Leave, a cause of action recognized only in federal law, 29 U.S.C. §§ 2601 et. seq. (2009). She also alleges that Defendant interfered with her exercise of her FMLA rights, which is a cause of action recognized only in federal law, 29 U.S.C. §§2601 et. Seq. (2009). Accordingly, this action may be removed to the United States District Court for the District of New Mexico pursuant to 28 U.S.C. §§ 1441 and 1446.

4. The Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b), as it is filed within thirty (30) days of service of Plaintiff's Complaint.

5. A Civil Cover Sheet is attached as **Exhibit B**.

6. Pursuant to 28 U.S.C. § 1446(d), Defendant is serving this Notice of Removal to counsel for Plaintiff and filing it with the Clerk of the First Judicial District Court, Santa Fe County, Santa Fe, New Mexico with a Notice of Filing of Notice of Removal.

Respectfully submitted,

MILLER STRATVERT P.A.

By: /s/ Paula G. Maynes
Paula G. Maynes
Stephen M. Williams
Attorneys for Defendant
200 West DeVargas, Suite 9
Santa Fe, New Mexico 87501
Telephone: (505) 989-9614
Email pmaynes@mstlaw.com
sWilliams@mstlaw.com

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing to be served on the following parties or counsel of record this 13th day of July, 2018, via United States first class mail, postage prepaid:

Diane Garrity
Serra & Garrity, P.C.
1331 Seville Road
Santa Fe, New Mexico 87505
(505) 983-6956
(505) 4704803 *m*
dgarrity@sgmnmlaw.com
Attorneys for Plaintiff

/s/ Paula G. Maynes
Paula G. Maynes

\abq-tamarack\prodata\006352-049606\pleadings_federal\3485913.docx